

No. 2009-17

AN ACT

HB 262

Regulating prescribed burning practices; providing for the powers and duties of the Department of Conservation and Natural Resources and the Department of Environmental Protection; and establishing certain immunities.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Prescribed Burning Practices Act.

Section 2. Legislative declaration and findings.

The General Assembly declares that prescribed burning is a land management tool that benefits the safety of the public, the environment and the economy of this Commonwealth. Therefore, the General Assembly finds that:

(1) Prescribed burning reduces naturally occurring vegetative fuels. Reducing the fuel load reduces the risk and severity of wildfires, thereby reducing the threat of loss of life and property.

(2) Public agencies and nongovernmental organizations in this Commonwealth have invested millions of dollars to purchase land for parks, wildlife areas, State forests, nature preserves and other outdoor recreational purposes. For many of these public and private lands, the use of prescribed burning is essential to maintain specific resource values for which the areas were acquired.

(3) Forests, grasslands and other natural areas in this Commonwealth constitute significant economic, biological and aesthetic resources of Statewide importance. Prescribed burning prepares sites for planting; removes undesirable competing vegetation; accelerates nutrient cycling; controls certain insect pests, pathogens and noxious weeds; and promotes oak regeneration. In these communities, prescribed burning improves and maintains the quality and quantity of wildlife habitats.

(4) Many of this Commonwealth's natural communities require periodic fire for maintenance of their ecological health. Prescribed burning is essential to the perpetuation, restoration and management of many plant and animal communities. Significant loss of this Commonwealth's biological diversity will occur if fire is excluded from these fire-dependent and fire-adapted communities.

(5) Proper training in the purposes, use and application of prescribed burning is necessary to ensure maximum benefits and protection for the public.

(6) Prescribed burning in the hands of trained, skilled and experienced people is safe and often represents one of the most cost-effective management techniques to accomplish many ecosystem restoration objectives and ecological goals.

(7) As development and urbanization increase in many areas of this Commonwealth, concerns about potential liability and nuisance complaints may inhibit the use of prescribed burning as a conservation and safety tool.

Section 3. Purpose.

The purpose of this act is to encourage the continued use of prescribed burning for fuel reduction, ecological, forest, wildlife and grassland management purposes.

Section 4. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Department.” The Department of Conservation and Natural Resources of the Commonwealth.

“National Wildfire Coordinating Group.” The organization comprised of representatives from Federal and State Government agencies which has developed formal standards and programs addressing wildland fire, including training, equipment and operational requirements for the appropriate use of prescribed burns.

“Prescribed burn” or “prescribed burning.” The planned and controlled application of fire to existing vegetative fuels:

(1) Under specified environmental conditions and following appropriate precautionary measures, in order to accomplish one or more specific land management objectives, including, but not limited to, vegetative fuel reduction, silvicultural treatments, wildlife habitat improvement and management of grassland and other plant communities.

(2) Conducted in compliance with a written prescribed burn plan and under the supervision of a prescribed burn manager.

“Prescribed burn manager.” An individual who successfully completes and maintains the level of training and experience required by the State Forester to review and approve a prescribed burn plan and supervise a prescribed burn.

“Prescribed burn plan.” A written plan reviewed and approved by a prescribed burn manager that includes measurable criteria to:

(1) Define the conditions for starting, controlling and extinguishing a prescribed burn for a specified area or multiple units within an area.

(2) Guide the selection of appropriate management responses.

(3) Indicate other required action.

The plan may include information relating to burn duration, smoke management, fuel and weather prescriptions, notification of adjacent landowners, safety contingencies and other relevant factors.

“Prescribed burn worker.” An individual who works under the direct supervision of a prescribed burn manager.

“Standards.” The prescribed burn standards developed under section 5. Section 5. Prescribed burn standards.

Within six months from the effective date of this section, the department shall develop standards, which shall include a 60-day public comment period, for the planning and conduct of prescribed burning in this Commonwealth. In developing the standards, the department shall consult with the Department of Environmental Protection, the Pennsylvania Game Commission and other public agencies and private organizations which have interest or experience in the practice of prescribed burning. The standards shall include, but not be limited to:

- (1) Minimum qualifications and training requirements for prescribed burn managers and prescribed burn workers.
- (2) Required content for prescribed burn plans.

To the greatest extent practicable, the standards shall be consistent with comparable requirements established by the National Wildfire Coordinating Group.

Section 6. Departmental regulations.

If deemed necessary and appropriate by the Secretary of Conservation and Natural Resources, the department shall establish by regulation:

- (1) A certification and revocation process for prescribed burn managers.
- (2) Requirements for the review and approval of prescribed burn plans.
- (3) A training program for prescribed burn managers and prescribed burn workers.

In the event such regulations are established, the department may charge and collect fees from persons participating in training or certification programs.

Section 7. Prescribed burn plan.

(a) Notification and review.—

(1) The prescribed burn manager shall notify the department and the Department of Environmental Protection in writing of the intention to conduct prescribed burning at the specific location of the proposed prescribed burn and the range of dates during which prescribed burns could take place.

(2) The notification required by this section shall be provided to the department and the Department of Environmental Protection at least 25 working days before the earliest possible date that a burn could occur. The written notification shall include a copy of the prescribed burn plan, or other such form as approved by the department and the Department of Environmental Protection.

(3) The department and the Department of Environmental Protection shall review and provide comments, if necessary, on the prescribed burn

plan no later than five working days prior to the earliest possible date that a burn could occur.

(b) Contents.—A prescribed burn plan shall include procedures that minimize the possibility that fire will escape from the desired area and minimize danger to the public and firefighting personnel from fire and smoke. The prescribed burn plan shall be consistent with the standards, and a prescribed burn shall be executed pursuant to the plan.

Section 8. Relationship to other laws.

The requirements of 25 Pa. Code § 129.14(a) and (b) (relating to open burning operations) do not apply to a prescribed burn which is executed pursuant to a prescribed burn plan consistent with the standards. This section shall not be construed to otherwise limit the authority of the Department of Environmental Protection under the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, and the regulations promulgated under this act.

Section 9. Public interest.

A prescribed burn conducted in compliance with this act and the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, is deemed to be in the public interest and shall not constitute a public or private nuisance.

Section 10. Prescribed burning requirements.

Prescribed burning under the provisions of this act shall be conducted:

(1) In compliance with the standards and regulations promulgated pursuant to section 6.

(2) In compliance with a prescribed burn plan which has been reviewed and approved by a prescribed burn manager and is available on site while the prescribed burn or burns are conducted.

(3) Only when at least one prescribed burn manager is present on site to supervise the burn or burns that are being conducted.

(4) Only with the written consent of each property owner or the legal representative of a property owner.

Section 11. Immunities.

(a) Civil or criminal penalty.—

(1) No owner of property who contracts with or authorizes a prescribed burn manager to conduct or permit a prescribed burn on the property pursuant to the requirements of this act shall be subject to civil or criminal penalty for damage or injury caused by the fire or resulting smoke, unless negligence is proven.

(2) No prescribed burn manager who executes and acts in accordance with a prescribed burn plan that satisfies the standards and who has attained the qualifications for planning and conducting a prescribed burn in accordance with the standards shall be subject to civil or criminal penalty for damage or injury caused by the fire or resulting smoke, unless negligence is proven.

(3) No person who acts under the direction of a prescribed burn manager executing a prescribed burn plan that satisfies the standards and who has attained the relevant qualifications for participating in a prescribed burn in accordance with the standards shall be subject to civil or criminal penalty for damage or injury caused by the fire or resulting smoke, unless negligence is proven.

(b) Private actions.—In a private civil action arising from the conduct of a prescribed burn and damage or injury caused by the fire or resulting smoke, proof of compliance with the requirements of this act and the standards shall be admissible evidence that the duty of care for such activity has been met.

Section 12. Effective date.

This act shall take effect immediately.

APPROVED—The 14th day of July, A.D. 2009.

EDWARD G. RENDELL